

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber,
Extended Composition)

6 March 2002 *

In Case T-168/99,

Territorio Histórico de Álava — Diputación Foral de Álava, represented by
A. Creus Carreras, lawyer,

applicant,

v

Commission of the European Communities, represented by F. Santaolalla,
G. Rozet and G. Valero Jordana, acting as Agents, with an address for service in
Luxembourg,

defendant,

APPLICATION for the annulment of the Commission Decision of 31 March 1999 initiating proceedings under Article 88(2) EC in respect of the aid granted by the Spanish Authorities Ramondín SA and Ramondín Cápsulas SA and requiring the Spanish Authorities to suspend payment of that aid (OJ 1999 C 194, p. 18),

* Language of the case: Spanish.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber, Extended Composition),

composed of: J. Azizi, President, K. Lenaerts, V. Tiili, R.M. Moura Ramos and M. Jaeger, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 26 June 2001,

gives the following

Judgment

Legal context

Maximum aid intensity allowed in the Basque Country

1 According to the Spanish regional aid map proposed by the Commission (OJ 1996 C 25, p. 3), the maximum limit for aid in the Basque Country is 25% net grant equivalent (nge).

Tax concessions in force in the Territorio Histórico de Álava

- 2 The tax arrangements in force in the Basque Country are governed by the Economic Agreement established by Spanish Law 12/1981 of 13 May 1981, as last amended by Law 38/1997 of 4 August 1997. Under the Economic Agreement, the Diputación Foral de Álava (Álava Provincial Council) may, under certain conditions, organise the tax system within its territory.

- 3 On that basis, the Diputación Foral de Álava has established several tax aid measures, in particular a tax credit of 45% and a reduction of the basis of assessment to corporation tax.

Tax credit of 45%

- 4 The Sixth Additional Provision of Norma Foral 22/1994 of 20 December 1994 (regional regulations) implementing the 1995 budget of the Territorio Histórico de Álava [*Boletín Oficial del Territorio Histórico de Álava* (hereinafter 'BOTH A') No 5, of 13 January 1995] reads as follows:

'Investments in new fixed assets made between 1 January 1995 and 31 December 1995, which exceed ESP 2 500 million, in accordance with the Diputación Foral de Álava agreement, will receive a tax credit of 45% of the cost of investment determined by the Diputación Foral de Álava, to be applied to the definitive amount of tax payable.

Any tax credit not used up because it exceeds the amount of tax liability may be applied in the nine years following the year during which the Diputación Foral de Álava agreement was concluded.

The Diputación Foral de Álava agreement will lay down the time-limits, and any restrictions applicable in each case.

The advantages granted under this provision will be incompatible with any other fiscal advantage in respect of the same investment.

The Diputación Foral de Álava will also determine the length of the investment process, which may include investments made during the preparation of the project which is at the root of the investment.'

5 The validity of that provision was extended, for the year 1996, by the Fifth Additional Provision of Norma Foral 33/1995 of 20 December 1995 (BOTH A No 4 of 10 January 1996), as amended by point 2.11 of the only derogating provision of Norma Foral 24/1996 of 5 July 1996 (BOTH A No 90 of 9 August 1996). For 1997, the fiscal measure was extended by the Seventh Additional Provision of Norma Foral 31/1996 of 18 December 1996 (BOTH A No 148 of 30 December 1996). The tax credit of 45% of the amount of the investments was retained, in an amended form, for the years 1998 and 1999 by the Eleventh Additional Provision of Norma Foral 33/1997 of 19 December 1997 (BOTH A No 150 of 31 December 1997) and by the Seventh Additional Provision of Norma Foral 36/1998 of 17 December 1998 (BOTH A No 149 of 30 December 1998) respectively.

Reduction of the basis of assessment to corporation tax

- 6 Article 26 of Norma Foral 24/1996 of 5 July 1996, referred to in the previous paragraph, provides as follows:

‘1. Companies starting their business activity shall be entitled to a reduction of 99%, 75%, 50% and 25% respectively in the positive basis of assessment deriving from their economic activity, before this is offset by any negative bases of assessment arising in previous periods, for the four consecutive tax periods running from the first period in which, within four years of starting their business activity, they generate a positive basis of assessment.

...

2. To qualify for this reduction, businesses shall fulfil the following conditions:

(a) They shall start their business activity with a minimum paid-up capital of ESP 20 million;

(b) ...

(c) ...

- (d) The new activity shall not have been carried on previously, either directly or indirectly, under different ownership;

- (e) The new business activity shall be performed on premises or in an establishment where no other activity is carried on by any natural or legal person;

- (f) They shall during the first two years of their activity invest at least ESP 80 million in tangible fixed assets, all of which assets shall be assigned to the activity and shall not be hired out or transferred for use by third parties. For the purposes of this requirement, goods acquired by leasing shall also be deemed to be investments in tangible fixed assets, provided that the business undertakes to exercise the purchase option;

- (g) They shall create at least 10 jobs within six months of starting their business activity and shall maintain the annual average workforce at that level from that point and until the year in which their entitlement to the reduction in the basis of assessment expires;

- (h) ...

- (i) They shall have a business plan covering a period of at least five years.

3. ...

4. The minimum amount of investment referred to in subparagraph (f) and the minimum number of jobs created referred to in subparagraph (g) of paragraph 2 above shall be incompatible with any other tax concession established for the same investment or job creation.

5. The reduction provided for in this Article shall be requested by means of an application lodged with the tax administration, which, after checking that the initial requirements are satisfied, shall where appropriate notify the applicant company of its provisional authorisation, to be formally adopted by decision of the Álava Provincial Council.

....’

The facts

- 7 Ramondín SA is a company incorporated under Spanish law and specialised in the manufacture of capsules for sealing bottles of still and sparkling wines and other quality beverages. Since 1971 it has been established at Logroño in the Autonomous Community of Rioja.

- 8 In 1997 Ramondín decided to transfer its industrial plant from Logroño to Laguardia, which is in the Territorio Histórico de Álava in the Basque Country. Accordingly, on 15 December 1997 Ramondín set up a new company, Ramondín Cápsulas SA, of which it holds 99.8% of the capital. It is intended that Ramondín Cápsulas will take over all the activities of Ramondín.

- 9 Under Decision 738/1997 of 21 October 1997 of the Diputación Foral de Álava (Álava Provincial Council), Ramondín obtained the tax credit of 45% referred to in paragraphs 4 and 5 above. As a newly-established company, Ramondín Cápsulas is also eligible for the reduction in the basis of assessment referred to in paragraph 6.

Administrative procedure

- 10 By letter dated 2 October 1997, the Commission received a complaint from the President of the Autonomous Community of Rioja, concerning State aid granted to Ramondín on the occasion of the transfer of its activities to the Basque Country.
- 11 On 31 March 1999, the Commission took the decision to initiate the procedure under Article 88(2) EC. It considered that the tax credit and reduction in tax base from which Ramondín and Ramondín Cápsulas benefited respectively constituted State aid within the meaning of Article 87(1) EC and expressed serious doubts as to the compatibility of those measures with the common market.
- 12 In the same decision, the Commission required the Spanish authorities to suspend payment of the tax aid concerned.
- 13 The decision of 31 March 1999 (hereinafter ‘the contested decision’) was notified to Spain by letter of 30 April 1999 which was published in the *Official Journal of the European Communities* on 10 July 1999 (OJ 1999 C 194, p. 18).

Procedure and forms of order sought by the parties

- 14 By application lodged at the Registry of the Court of First Instance on 13 July 1999, the applicant brought the present action for annulment of the contested decision.

- 15 On hearing the report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure.

- 16 The parties presented oral argument and replied to the questions put by the Court at the hearing on 26 June 2001.

- 17 The applicant claims that the Court should:
 - declare the application admissible and well founded;

 - annul the contested decision in so far as it initiates a State aid procedure against the fiscal measures provided for in Normas Forales (regional regulations) de Álava 22/1994 and 24/1996 and requires the Spanish State to suspend the payment of sums in pursuance thereof to Ramondín;

 - order the Commission to pay the costs.

18 The Commission contends that the Court should:

- declare the application inadmissible;

- alternatively, dismiss the application as unfounded;

- order the applicant to pay the costs.

Subject-matter of the proceedings

- 19 In its application, the applicant maintains that the tax credit introduced by Norma Foral 22/1994 and the reduction in the tax base introduced by Norma Foral 24/1996 (hereinafter the ‘disputed fiscal measures’) do not constitute State aid within the meaning of Article 87(1) EC. In those circumstances, the decision to initiate the procedure under Article 88(2) EC against the disputed fiscal measures, and the order addressed to the Spanish authorities to suspend application of those measures, are unlawful.
- 20 The Court observes that, at the end of the procedure initiated by the contested decision, the Commission adopted Decision 2000/795/EC of 22 December 1999 on the State aid implemented by Spain for Ramondín and Ramondín Cápsulas (OJ 2000 L 318, p. 36).

21 In Decision 2000/795, the Commission characterised the disputed fiscal measures as State aid. Furthermore, Decision 2000/795 declared the measures to be wholly or partially incompatible with the common market in the following terms:

‘The following State aid implemented by Spain is incompatible with the common market:

(a) the grant to [Ramondín Cápsulas] of the reduction in the tax base for newly established businesses provided for by Article 26 of Provincial Law 24/1996 of 5 July 1996;

(b) the grant to [Ramondín] of a tax credit corresponding to 45% of the cost of the investment as determined by the Álava Provincial Council in Decision No 738/1997 of 21 October 1997, as regards the part of the aid which, in accordance with the rules on the cumulation of aid, exceeds the ceiling of 25% nge for regional aid in the Basque Country’ (Article 2 of Decision 2000/795).

22 By application lodged at the Registry of the Court of First Instance on 19 April 2000, the applicant brought an action for annulment of Decision 2000/795 (Case T-92/00).

23 In the application in Case T-92/00, the applicant — using a line of argument identical to that put forward in the present case — contested the characterisation of the disputed fiscal measures as State aid.

- 24 By judgment delivered today in Case T-92/00, the Court of First Instance held that the Commission correctly characterised the disputed fiscal measures as State aid and dismissed the application (Joined Cases T-92/00 and T-103/00 *Territorio Histórico de Álava and Others v Commission* [2002] ECR II-1385).
- 25 Accordingly, the present action, in the light of the arguments presented by the applicant (see paragraph 19 above), has become devoid of purpose.
- 26 It must be pointed out in that regard that the applicant itself acknowledged, in its application in Case T-92/00, that the adoption of Decision 2000/795 had ‘the effect of making the... action [in Case T-168/99] purposeless’.
- 27 There is therefore no further need to adjudicate on this case.

Costs

- 28 Under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment, the costs are in the discretion of the Court. Since the applicant has been unsuccessful in its action against Decision 2000/795, which was adopted at the end of the procedure initiated by the contested decision, it must be ordered to pay the costs in this case (see the judgment of the Court of Justice in Case 56/85 *Brother v Commission* [1988] ECR 5655, paragraph 8).

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber, Extended Composition)

hereby:

1. Declares that there is no need to adjudicate on this case;
2. Orders the applicant to pay the costs.

Azizi

Lenaerts

Tiili

Moura Ramos

Jaeger

Delivered in open court in Luxembourg on 6 March 2002.

H. Jung

Registrar

M. Jaeger

President